

STATE OF MICHIGAN
COURT OF APPEALS

In re JONES, Minors.

UNPUBLISHED
December 11, 2014

No. 322403
Bay Circuit Court
Family Division
LC No. 12-011307-NA

Before: RONAYNE KRAUSE, P.J., and K. F. KELLY and STEPHENS, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating his parental rights to minor children SJ, JJ, and HJ pursuant to MCL 712A.19b(3)(c)(i) (failure to rectify conditions leading to adjudication), MCL 712A.19b(3)(c)(ii) (failure to rectify other conditions), and MCL 712A.19b(3)(g) (failure to provide proper care and custody). We affirm.

I. BACKGROUND

On December 23, 2012, the mother of SJ, JJ, and HJ died of a drug overdose. Respondent father was incarcerated for absconding from probation at the time and was therefore, unavailable to take the children. Three days later on December 26, 2012, the circuit court authorized a petition for placement of the children into foster care. At the time, SJ was three-years-old, JJ was two-years-old, and HJ was four months old. Respondent was released from jail on February 11, 2013, and two days later appeared in the circuit court for the Department of Human Services' temporary custody petition. Respondent pled to jurisdiction and admitted that because of his incarceration he was unable to provide proper care and custody for his children.

Respondent was offered services to assist him with identified parenting skills, housing needs, mental health needs, and employment but his compliance with the services provided was inconsistent. He stayed for a short time with his mother, followed by stays with friends, a girlfriend at her home, and then a homeless shelter. He missed numerous drug screens, counseling appointments, medication reviews, and parenting visits. He also failed to appear for scheduled case-management and probation meetings. At the time of the termination hearing, some fifteen months later, respondent was still without employment and suitable housing.

II. TERMINATION OF PARENTAL RIGHTS

Respondent argues that the trial court erred in finding clear and convincing evidence of grounds to terminate his parental rights and in finding by a preponderance of the evidence that termination was in his children's best interests. We disagree.

Statutory Grounds for Termination

We review for clear error a trial court's finding that the statutory grounds for termination has been proven by clear and convincing evidence, MCR 3.977(K); *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App at 296-297.

MCL 712A.19b(3)(c)(ii), provides that termination is proper if more than 182 days lapsed from the initial dispositional order and:

Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

The conditions leading to adjudication were the death of the children's mother and respondent's inability to provide proper care and custody for his children because he was incarcerated. At the time of termination, he was no longer incarcerated and was in compliance with his probation. However, other conditions had arisen and remained unaddressed. Those conditions included: lack of housing, lack of employment, lack of state ID, mental health and substance abuse issues, and concerns about parenting skills. Each of those concerns was addressed in the initial parent/agency treatment agreement, and respondent received services for all of them, including case-management services, transportation, a substance abuse assessment, substance abuse counseling, drug screens, supervised visitation, parenting classes, and a psychological evaluation. At the termination hearing the court received testimony that demonstrated respondent's persistent inability to attend counseling sessions, case-management meetings, parenting visits, drug screens, and medical reviews. Respondent received a certificate for completion of parenting classes, but the parent educator noted respondent fell asleep several times during class. Although respondent was informed about HJ's dietary issues, he admittedly continued to feed her food that her body could not handle. HJ's foster father testified that because of the inappropriate food, HJ would have diarrhea. At the termination hearing, respondent explained his difficulty in complying with HJ's food restrictions as the gluten-free products being expensive and spoiling quickly. In an effort to keep HJ from starving, respondent admitted that HJ eats what she is not suppose to eat. Respondent was discharged from substance abuse counseling for "spotty" attendance. He further missed 22 of his scheduled 75 drug screens. Finally, respondent was unable to obtain suitable housing and failed to avail himself of referrals for employment throughout the duration of the case. Respondent was provided with services to promote reunification with his children for over a year. The trial court did not err in finding that the conditions could not be rectified in a reasonable time considering the ages of the

children. Accordingly, on this record, the trial court did not err in finding termination was proper pursuant to MCL 712A.19b(3)(c)(ii).

The trial court also terminated pursuant to MCL 712A.19b(3)(g), which provides that termination is proper if “[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.” As noted above the respondent neither had provided care for his children nor was he likely to do so within a reasonable time. At the time of termination, SJ was four, JJ was three, and HJ was 20 months. They had been in care from December 2012 until March 2014. During that time, respondent was consistently inconsistent with participating in services. Respondent was discharged from individual counseling for lack of attendance, his access to his mental health medications was delayed in part because he missed multiple medication reviews, and he missed numerous drug screens and counseling appointments for his substance abuse. Further, respondent did not consistently attend his appointments with his case manager, claiming that the appointments were not beneficial. Respondent also missed parenting-time visits, although, admittedly, he was more consistent with those appointments than he was with others in the case. Respondent also failed to obtain a valid state ID, even though it was required by the court, would have helped his situation of unemployment, and his case workers had taken the time to help him with gathering the required information.

On this record, were services to continue, it is unclear whether respondent would be able to actually follow through with his requirements within a reasonable time considering his children’s young ages. Accordingly, the trial court did not err in finding termination was proper pursuant to MCL 712A.19b(3)(g).¹

Best Interests Determination

The trial court also did not err in finding that termination of respondent’s parental rights was in the children’s best interests. “If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” MCL 712A.19b(5). “[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence.” *In re Moss Minors*, 301 Mich App 76, 90; 836 NW2d 182 (2013). “In deciding whether termination is in the child’s best interests, the court may consider the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). The trial court may also consider an unfavorable psychological evaluation, the child’s age, continued involvement in domestic

¹ We need not address the court’s conclusion § 19b(3)(c)(i) was established given the conclusion that (3)(c)(ii) and (3)(g) were established. MCL 712A.19b(3). Nonetheless, we note that respondent had been released from his incarceration.

violence, and a parent's history. See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

Although there was testimony that respondent and his children were bonded and had positive interactions during parenting time, the court noted the children's pressing need for permanence. The children were young when they were removed from their home in late December 2012. Accordingly, they lived with foster parents for a significant portion of their lives. Respondent's history of noncompliance with services created an unstable environment and future for his children. His poor parenting skills strained whatever bond existed with the children. There was also testimony from caseworkers that respondent was scaring the children into behaving, had teased JJ to the point where the child was sick, and was overly stern with JJ. The record further showed that, with regard to HJ, in spite of knowing the serious consequences of feeding her certain foods, respondent continued to do so. The trial court did not err in finding that the best interests of the children were served by termination.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Kirsten Frank Kelly
/s/ Cynthia Diane Stephens